

WILLS AND SUCCESSION CONFLICT PROVISIONS – Report

Presenter: Peter Lown, Q.C., Alberta Law Reform Institute

Peter Lown presented a report of the working group on Wills and Succession Conflict Provisions. The task of the working group was to review Professor Gerald Robertson's 2009 study paper, which had set out recommendations on three primary subjects: testate succession, intestate succession and matrimonial property rights on death.

1. The working group agrees that those jurisdictions which have not implemented the choice of law rules contained in the 1966 revisions to the *Uniform Wills Act* should give active consideration to doing so.
2. The working group agrees that section 40 of the *Uniform Wills Act* should be amended to include the law of the testator's nationality and habitual residence at the time of death in the list of legal systems which determine the formal validity of a will in respect of moveables.
3. The working group agrees that section 40 of the *Uniform Wills Act* should be amended to include the law of the place where the property is situated in the list of legal systems which determine the formal validity of a will in respect of moveables.
4. The working group agrees that section 40 of the *Uniform Wills Act* should be extended to include wills relating to immoveable property.

5. The doctrine of renvoi should not be abolished, but its operation should be restricted (covered by recommendation 1).
6. The working group recommends that the *Uniform Wills Act* should be amended to include a codification of the common law rules relating to capacity to make a will in respect of moveables and immoveables. While the law in the common law provinces differs from the law in Quebec on this point, the working group is to unify the common law in a way that also harmonizes with the civil law approach.
7. The working group believes it should be left to the courts to determine which juridical category applies to the issue (for example, matrimonial law or succession law), so as then to be able to select the applicable choice of law rule.
8. The working group does not recommend a wholesale adoption of the unitary approach underlying the 1989 Hague Convention, but a few changes should be made that are consistent with that Convention.
9. The working group recommends that the *Uniform Intestate Succession Act* be amended to prevent a surviving spouse from claiming multiple preferred shares on intestacy and from circumventing the restrictions on “double dipping”.
10. The working group does not recommend that intestate succession legislation be amended to include choice of law provisions to determine issues of status.
11. The working group agrees that those jurisdictions which have not implemented the *Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings Act (1997)* should give active consideration to doing so.
12. The working group does not recommend that uniform legislation include provisions addressing the issue of how the division of matrimonial property upon death should be characterized for choice of law purposes.

The Civil Section is currently working on a *Uniform Wills Act*, and Prof. Lown noted that the above recommendations could be incorporated into that project.

RESOLVED:

That the report of the working group be adopted as guiding policy with respect to conflict of laws issues arising in succession.